

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. A-5737

PETITION OF JUDITH AND MURRAY LIST

(Hearing held April 3, 2002)

OPINION OF THE BOARD

(Effective date of Opinion, May 2, 2002)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59 Mont. Co. Code 1994, as amended) for variances from Sections 59-C-1.326(a)(2)(c) and 59-C-1.326(a)(1). The petitioners propose to construct a carport that requires a variance to be located in the side yard and a variance of three (3) feet as the carport is within two (2) feet of the side lot line. The required side lot line setback is five (5) feet and Section 59-C-1.326(a)(1) requires accessory structures to be located in the rear yard only.

The subject property is Lot 11, Block B, located at 11042 Seven Hill Lane, Potomac, Maryland, in the R-90 Zone (Tax Account No. 00863247).

Decision of the Board: Requested variances **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to construct a two vehicle carport in the eastern section of the lot.
2. The petitioner testified that her lot is landlocked and is only accessible via a service road located on neighboring Lot 12. The petitioner testified that the legal address for the property is Seven Hill Lane and that the Department of Permitting Services (DPS) designated the property's eastern rear yard as a side yard.
3. The petitioner testified that the carport could not be located in the DPS designated rear yard because of a steep slope. See, Exhibit No. 6(d). The petitioner testified that the proposed structure would be built with a roof and four supporting polls and on the existing concrete pad.
4. The petitioner testified that the structure would be similar to existing structures in the neighborhood, as shown in Exhibit No. 6(f). The petitioner testified that the lot is heavily wooded and that the structure would be screened by the existing mature vegetation and trees.

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The petitioner's property is a land-locked lot that is only accessible via a service road. DPS has designated the property's rear yard as a side yard. The DPS designated

rear yard is steeply sloped. The Board finds that these conditions are peculiar to the property and that the strict application of the zoning regulations would result in practical difficulties for and an undue hardship upon the property owner.

- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the requested variances are the minimum reasonably necessary.

- (c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The proposed construction will continue the residential use of the property and the variances will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the proposed construction would be screened by the existing trees and vegetation and that the variances will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the variances from the requirement that accessory structures are to be located in the rear yard only and of three (3) feet from the required seven (7) foot side lot line setback for the construction of an accessory structure (carport) are granted subject to the following conditions:

1. The petitioner shall be bound by all of her testimony and exhibits, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4 and 5(a) through 5(c).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Donna L. Barron, seconded by Louise L. Mayer, with Angelo M. Caputo, Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 2nd day of May, 2002

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.